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School Finance Litigation: McCleary v. State of  
Washington

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9-8-2009

**Reporter's Verbatim Report of Proceedings, Tuesday, September  
8, 2009, Volume V, Session 1 of 4 [Pages 964-1027] 07-2-02323-2**

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1 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

2 IN AND FOR KING COUNTY

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4	MATHEW and STEPHANIE McCLEARY,	)	
	on their own behalf and on	)	
5	behalf of KELSEY and CARTER	)	
	McCLEARY, their two children in	)	
6	Washington's public schools;	)	SUPREME COURT OF WA
	ROBERT and PATTY VENEMA, on their	)	No. 84362-7
7	own behalf and on behalf of HALIE)	)	
	and ROBBIE VENEMA, their two	)	
8	children in Washington's	)	
	public schools; and NETWORK	)	
9	FOR EXCELLENCE IN WASHINGTON	)	
	SCHOOLS ("NEWS"), a state-wide	)	
10	coalition of community groups,	)	
	public school districts, and	)	
11	education organizations,	)	
		)	
12	Petitioners,	)	KING COUNTY CAUSE
		)	No. 07-2-02323-2 SEA
13	vs.	)	
		)	
14	STATE OF WASHINGTON,	)	
		)	
15	Respondent.	)	

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17 REPORTER'S VERBATIM REPORT OF PROCEEDINGS

18 --oOo--

19 TUESDAY, SEPTEMBER 8, 2009

20 VOLUME V - Session 1 of 4

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23 Heard before the Honorable John P. Erlick, at King

24 County Courthouse, 516 Third Avenue, Room W-1060,

25 Seattle, Washington.

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CYNTHIA A. KENNEDY, RPR  
CSR No. 3005  
Official Court Reporter  
King County Superior Court  
516 Third Avenue, C912  
Seattle, Washington 98104

(206) 296-9188



1                   A P P E A R A N C E S:

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4   THOMAS F. AHEARNE, CHRISTOPHER G. EMCH, and EDMUND W.  
5   ROBB, Attorneys at Law, appearing on behalf of the  
6   Petitioners;

6

7   WILLIAM G. CLARK and CARRIE L. BASHAW, Assistant  
8   Attorney Generals, appearing on behalf of the  
9   Respondent.

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4 TUESDAY, SEPTEMBER 8, 2009 - Morning Session

5 JUDITH BILLINGS (Resumed)

6 Direct (Resumed) by Mr. Robb 970

Cross by Mr. Clark 988

7 Recess - Change in court reporters 1027

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ADMITTED

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1 SEATTLE, WASHINGTON

2 TUESDAY, SEPTEMBER 8, 2009

3 MORNING SESSION - 9:00 A.M.

4 --oOo--

5 THE COURT: Good morning. Please be seated.

6 We are back on the record in the matter  
7 of McCleary versus State of Washington. This is cause  
8 number 07-2-02323-2 Seattle, and this is the second  
9 week of trial.

10 Counsel, before we begin I have one  
11 preliminary matter and that is to confirm that my  
12 meeting on Thursday afternoon is a mandatory meeting.  
13 That means that we're going to lose two-and-a-quarter  
14 hours of trial time and we will be recapturing it  
15 probably by shortening our noon recesses at some point  
16 from an hour and a half to an hour and a quarter,  
17 ultimately to probably an hour. So we'll make sure  
18 that we make up your trial time.

19 Are there any preliminary matters before  
20 we put Dr. Billings back on the stand?

21 Mr. Emch?

22 MR. EMCH: Nothing from petitioner.

23 THE COURT: Okay. Mr. Clark?

24 MR. CLARK: None, Your Honor.

25 THE COURT: All right. Very good.



1                   Dr. Billings, would you please retake  
2 the stand? And, Mr. Robb.

3                   JUDITH BILLINGS (Resumed),  
4 called as a witness herein, having been first duly  
5 sworn, was examined and testified as follows:

6                   DIRECT EXAMINATION (Resumed)

7 BY MR. ROBB:

8       Q.       Good morning, again, Dr. Billings.

9       A.       Good morning.

10      Q.       And I did apologize last time for delaying  
11 you until the afternoon and now I have to apologize for  
12 delaying you over the long holiday weekend, but I thank  
13 you anyway for being here.

14                   When we broke last time, we were  
15 beginning to speak of the Governor's Council on  
16 Education Reform and Funding.

17                   Do you recall that?

18      A.       I do.

19      Q.       Could you explain -- actually, first, you  
20 were a member of the Governor's Council on Education  
21 Reform and Funding, were you not?

22      A.       I was.

23      Q.       And were you superintendent of public  
24 instruction at that time as well?

25      A.       Yes.

1       Q.     As a former member, will you please explain  
2 what the Governor's Council on Education Reform and  
3 Funding was and why it was formed.

4       A.     The purpose was to, in essence, design a new  
5 system to identify what the substantive content of an  
6 education program for students in the State of  
7 Washington ought to be and to then, secondly, look at  
8 the kind of funding that it would take to put that  
9 reform package into place.

10      Q.     As a former member of the Governor's Council  
11 on Education Reform and Funding, will you please  
12 explain how you, at the time, believed that your work  
13 related to Article IX, Section One of the Constitution?

14      A.     What we believed was that we needed to have a  
15 system where every child could succeed, and since that  
16 section requires that the state, as its paramount duty,  
17 provide ample funding for all students.

18                   What we were trying to do was define  
19 what the education system was and how we were going to  
20 make sure that happened.

21      Q.     And did you believe that that work was, in  
22 part, in compliance with the Seattle School District  
23 Opinion that we discussed on Thursday?

24      A.     Yes.

25      Q.     As a former member, do you believe that the

1 state did define the substantive education that should  
2 be provided to kids under Article IX, Section One of  
3 the Constitution?

4 A. Yes. I believe that we certainly laid the  
5 groundwork with our recommendations from the Governor's  
6 Council and those were put into statute in the  
7 following -- in 1992 and 1993.

8 Q. I'm going to begin by handing you trial  
9 Exhibit 360.

10 Could you please identify trial Exhibit  
11 360 for the record.

12 A. This exhibit is the final report from the  
13 Governor's Council on Education Reform and Funding that  
14 was issued in December of 1992.

15 Q. And does that report contain the conclusions  
16 of the Governor's Council on Education Reform and  
17 Funding?

18 A. Yes.

19 Q. Turn, if you would, please, to page 23.

20 A. Excuse me. Am I looking at the numbers at  
21 the top or at the bottom?

22 Q. I'm sorry. The numbers at the bottom, the  
23 page numbers of the original document.

24 A. Okay. I think I have it. Very small.

25 Q. Is that where you described the Governor's

1 Council on Education Reform and Funding described the  
2 substantive education that you were mentioning  
3 earlier?

4 A. Yes, these are the four standards that the  
5 commission recommended or the council recommended that  
6 would define the substantive content of what we wanted  
7 in the education system.

8 Q. Now, this report is generally credited with  
9 transforming Washington's education system from a seat-  
10 time system into a performance-based system; is that  
11 correct?

12 A. Yes.

13 Q. Could you please describe what the difference  
14 is between a seat-time system and the performance-based  
15 system.

16 A. Yes. A seat-time system is made up of things  
17 like 180 days, five hours of class per day, a certain  
18 number of minutes per various content areas. And so,  
19 in seat time, if a student was in their seat for 12  
20 years, 13 years, including kindergarten, and as long  
21 they were passing with at least a D, they could  
22 graduate whether or not there was any assessment of  
23 what they really knew and were able to do.

24 Q. Are there additional expectations of students  
25 in a performance-based system?

1       A.     In a performance-based system, yes, because  
2     what I've just described is an input system where those  
3     are inputs. What we were designing was an output  
4     system where what was important was what a student  
5     would know and be able to do that would prepare them  
6     for either going into the workforce or into additional  
7     technical training or on to further education.

8       Q.     And as the students moved through that  
9     system, is there some sort of way that you determine  
10    whether they have, indeed, received that kind of  
11    education that prepares them for the workplace or the  
12    next phase of their education?

13      A.     Yes. There was to be designed what was  
14    called the Washington Assessment of Student Learning.  
15    This was to be given to students at 4th grade, at 7th,  
16    and at 10th grade, and that was an assessment of what  
17    they would know in the substantive content areas at  
18    that time so that there was a system to check on  
19    whether or not, in fact, they were achieving what we  
20    expected them to.

21      Q.     The report, which is trial Exhibit 360  
22    mentions a certificate of mastery on page 22.

23      A.     Yes.

24      Q.     How does that relate to what the students  
25    know?

1       A.     There was an expectation that by the time  
2 students were in the 10th grade they should have  
3 mastered the basics. And at that point, then they  
4 would be issued a certificate of mastery indicating  
5 that, given the assessments they had taken during their  
6 educational career up to that point, that they mastered  
7 the basics, and then their last two years of high  
8 school could be spent expanding their knowledge in a  
9 more integrated fashion and allowing them to take the  
10 kinds of preparation that would more suitably prepare  
11 them for the kinds of things they were interested in.

12                 One of the things was called -- we  
13 called it Career Pathways. That's the last two years  
14 of high school were then to continue to take  
15 substantive content but that it would be integrated in  
16 a way that would help them prepare for going directly  
17 into the workforce or going on to higher education.

18       Q.     Now, did the Governor's Council on Education  
19 Reform and Funding itself devise or create the testing  
20 that would lead to a certificate of mastery?

21       A.     No, that was the function of a group that was  
22 established through recommendations from the council  
23 and then the legislation that followed called the  
24 Commission on Student Learning, and they were tasked  
25 with putting together an assessment system that would

1 measure at these points along the way how students were  
2 doing.

3 Q. And the Commission on Student Learning,  
4 that's what's mentioned on page 24 of trial Exhibit  
5 360?

6 A. Yes.

7 Q. Well, were the recommendations that you made  
8 in the final report of the Governor's Council on  
9 Education Reform and Funding put into place?

10 A. Many of them were. Not all of them were.

11 Q. Where were those that were put into place put  
12 in place?

13 A. There was a preliminary bill in 1992 while  
14 the commission -- or the council was still operating  
15 that laid the groundwork for what was to become House  
16 Bill 1209, which was the bill that put formally into  
17 place the recommendations.

18 Q. Now, you mentioned the Council on Student  
19 Learning.

20 Were you a member of that council as  
21 well?

22 A. The Commission on Student Learning?

23 Q. I'm sorry. The commission.

24 A. Yes, I was a member.

25 Q. Okay. And at that time were you also

1 superintendent of public instruction --

2 A. Yes.

3 Q. -- for the State of Washington?

4 Did that commission, in fact, create the  
5 additional standards that you mentioned?

6 A. Yes. The Commission on Student Learning had  
7 a very, very substantive process where they brought in  
8 a wide variety of people, business people, experts in  
9 the various content areas, teachers, parents, to put  
10 together essential academic learning requirements for  
11 each of the eight -- at that time eight substantive  
12 content areas that were identified in 1209.

13 Q. And did the commission also develop the tests  
14 that you mentioned?

15 A. Yes. The commission developed the Washington  
16 Assessment of Student Learning, and that test was,  
17 again, developed in consultation with this wide variety  
18 of folks because there was -- the intent here was to  
19 clearly have an assessment that was closely tied to the  
20 Essential Academic Learning Requirements so that it  
21 wasn't just an off-the-shelf test, but the two were  
22 totally correlated.

23 Q. And that's why you didn't simply adopt an  
24 already, as you say, off-the-shelf test.

25 A. Yes.



1       Q.     Now, funding was also part of the Governor's  
2 Council for Education Reform and Funding's charge, was  
3 it not?

4       A.     Yes, it was.

5       Q.     Did you and that council address funding?

6       A.     We addressed it to the point that we made a  
7 recommendation to the legislature that was that -- in  
8 that the legislature in consultation with the Office of  
9 Financial Management, the State Board of Education, and  
10 the Superintendent of Public Instruction Office would,  
11 by 1997-'98, have come up with a funding system that  
12 would fully put into place the recommendations that  
13 were made in 1209.

14      Q.     So you didn't, in the Governor's Council on  
15 Education Reform and Funding, devise that new system.

16      A.     No.

17      Q.     But was there an expectation that that would  
18 follow?

19      A.     Absolutely. That was in the recommendations  
20 that that system would be, within a reasonable period  
21 of time, put in place, again, to meet the  
22 constitutional mandate of ample provision for the  
23 education of all students using that substantive  
24 content that we had defined.

25      Q.     And by within a reasonable time, would you --

1 you meant in the '90s; is that correct?

2 A. Yes. Yes. The specific date was  
3 recommended, as I say, was in 1997-'98.

4 Q. I'm going to give you trial Exhibit 133 now.  
5 I'll take this binder from you.

6 Can you identify trial Exhibit 133 for  
7 the record, please?

8 A. This exhibit is Engrossed Substitute House  
9 Bill 1209, which became simply known as House Bill  
10 1209, the Education Reform Bill.

11 Q. And is this the bill that you referenced  
12 earlier that includes many of the recommendations of  
13 the Governor's Council on Education Reform and Funding?

14 A. Yes.

15 Q. Now, and if you would turn to page three of  
16 the bill using the bottom numbers.

17 Those four numbered provisions there,  
18 read with comprehension, write with skill, et cetera,  
19 are those the four recommendations that Governor's  
20 Council on Education Reform and Funding made for  
21 education?

22 A. Yes, they are, with a few changes but, yes,  
23 they are essentially.

24 Q. Now, I know that you mentioned that you never  
25 got to the funding part of your work with the

1 Governor's Council on Education Reform and Funding, but  
2 was there any funding included for this transition to  
3 reform the state's system in House Bill 1209?

4 A. There was some funding that funded some of  
5 the recommendations. It was not fully funded.

6 Q. Could you maybe give me an example of some of  
7 the ways that it wasn't fully funded?

8 A. Well, for instance, the recommendation was  
9 that an essential part of this new system was the  
10 teacher training, and so the recommendation was that  
11 that there be 10 days for teachers to learn and prepare  
12 how to operate in this new system, the kind of basic  
13 knowledge they needed. As it ended up, only four days  
14 were funded and that then was cut back to two days when  
15 money got tight. And in most of the recommendations  
16 that were made, it would say in the introduction to the  
17 program, it said -- it would say this particular piece  
18 as funding becomes available, so it was very clear that  
19 there was -- it was not going to be guaranteed funding,  
20 if you will, for all pieces that were recommended.

21 Q. But was it possible, do you believe, to find  
22 out how much it would have cost for the state to  
23 deliver the kind of education that was described in the  
24 Governor's Council on Education Reform and Funding and  
25 then House Bill 1209?

1       A.     Yes, I believe it was certainly possible.

2       Q.     And why do you say that?

3       A.     Because you can look at what personnel would  
4 have been needed, what programs would have been needed  
5 in terms of funding, in terms of the assessment. All  
6 of those things you could cost out.

7       Q.     And at the time that this was happening -- I  
8 know you said that funding wasn't provided, but you  
9 were superintendent of public instruction at the time,  
10 were you not?

11      A.     I was.

12      Q.     So why couldn't you have simply provided the  
13 funding that was necessary to implement the  
14 recommendations of the Governor's Council on Education  
15 Reform and Funding, House Bill 1209, and Seattle School  
16 District Opinion?

17      A.     The superintendent of public instruction has  
18 the authority to make recommendations. The  
19 superintendent does not have the authority to  
20 appropriate dollars.

21      Q.     Well, you testified last time, you were here  
22 on Thursday, that you never asked for more money than  
23 you thought was required when you were superintendent  
24 of public instruction.

25                   Were you able, do you believe, to

1 request enough money to provide all children in the  
2 State of Washington with the knowledge and skills  
3 described in our state's Essential Academic Learning  
4 Requirements?

5 A. What we requested was what we felt was  
6 politically feasible. Actually, had I requested the  
7 full amount that would have funded this, I probably  
8 would have been laughed out of the legislature.

9 Q. From what you've seen, both as superintendent  
10 of public instruction and through your work on the  
11 Governor's Education -- GCERF and the following  
12 commissions, do you believe that the state has ever  
13 provided enough resources for all kids in the State of  
14 Washington to be provided with the knowledge and skills  
15 described by our state's Essential Academic Learning  
16 Requirements, House Bill 1209, and the Seattle School  
17 District Opinion?

18 A. No.

19 Q. Do you believe that, from what you've seen,  
20 that this state has ever provided all kids in the state  
21 with a realistic or effective opportunity to get the  
22 education as described in the Essential Academic  
23 Learning Requirements, the state's Essential Academic  
24 Learning Requirements, House Bill 1209, and the Seattle  
25 School District's Opinion?

1           A.       No.

2           Q.       Do you believe that with fully sufficient  
3 resources all kids could be provided with the knowledge  
4 and skills described in the state's Essential Academic  
5 Learning Requirements, House Bill 1209, and the  
6 education described in the Seattle School District's  
7 Opinion?

8           A.       Yes.

9           Q.       And do you believe that with fully sufficient  
10 resources that all kids in the state could be provided  
11 with a reasonable and effective opportunity to learn  
12 the knowledge and skills that are described in the  
13 state's Essential Academic Learning Requirements, House  
14 Bill 1209, and the Seattle School District's Opinion?

15          A.       Yes.

16               MR. ROBB: Your Honor, the petitioner would  
17 offer trial Exhibit 360.

18               THE COURT: Exhibit 360 is offered.

19               MR. CLARK: No objection, Your Honor.

20               THE COURT: Exhibit 360 is admitted.

21                       EXHIBIT ADMITTED

22               MR. ROBB: Petitioners would also offer trial  
23 Exhibit 133.

24               THE COURT: Exhibit 133 is offered.

25               MR. CLARK: No objection, Your Honor.

1 THE COURT: Exhibit 133 is admitted.

2 EXHIBIT ADMITTED

3 MR. ROBB: Petitioner's would also offer  
4 trial Exhibit 4, which is the Essential Academic  
5 Learning Requirements that Dr. Billing's testified  
6 about.

7 THE COURT: Exhibit 4 is offered.

8 MR. CLARK: No objection, Your Honor.

9 THE COURT: Exhibit 4 is admitted.

10 EXHIBIT ADMITTED

11 MR. ROBB: Petitioners would offer trial  
12 Exhibit 685, which is the updated version of the  
13 Essential Academic Learning Requirements.

14 THE COURT: Exhibit 685 is offered.

15 MR. CLARK: I want to check it, Your Honor.

16 THE COURT: Certainly.

17 MR. CLARK: No objection, Your Honor.

18 THE COURT: Exhibit 685 is admitted.

19 EXHIBIT ADMITTED

20 MR. ROBB: And then we would also like to  
21 offer a number of the Essentially Academic Learning  
22 Requirements that have been broken out by subject area  
23 beginning with trial Exhibit 146.

24 THE COURT: Exhibit 146 is offered.

25 MR. CLARK: I'm checking on it, Your Honor.

1 THE COURT: Certainly.

2 MR. CLARK: No objection to 146, Your Honor.

3 THE COURT: 146 is admitted.

4 EXHIBIT ADMITTED

5 MR. ROBB: Petitioners would also offer  
6 Exhibit 149, which is the Essential Academic Learning  
7 Requirements for communication.

8 THE COURT: 149 is offered.

9 MR. CLARK: Your Honor, the only concern I  
10 have is we're getting into a number of exhibits here  
11 that weren't even discussed with the witness, so I  
12 would just -- offering them up and -- I guess, we are.

13 THE COURT: Mr. Robb, would you like to  
14 address that?

15 MR. ROBB: Yes, Your Honor.

16 We've discussed the Essential Academic  
17 Learning Requirements with Dr. Billings. In the  
18 interest of time, we'd wish to admit them in this way.

19 THE COURT: I don't know that we've  
20 established what the source of these documents is.

21 MR. ROBB: I don't believe there's any  
22 objection to these documents.

23 THE COURT: Right, but it might be helpful to  
24 the court to know where they are from, just to put them  
25 into context.



1           MR. ROBB: Okay. They're from the OSPI  
2 website, Your Honor.

3           THE COURT: Okay.

4           MR. CLARK: Might I make a suggestion, Your  
5 Honor?

6           THE COURT: Certainly.

7           MR. CLARK: If we're going to offer  
8 exhibits -- and I suspect we'll do the same thing --

9           THE COURT: Sure.

10          MR. CLARK: -- without a sponsoring witness  
11 and there's no objection to them, could we do it by  
12 giving each other notice that we're going to offer  
13 these things up so we can check them and then we can do  
14 them rapidly rather than me saying, excuse me, let me  
15 look at this one, let me look at that one?

16          THE COURT: That might be an efficient way to  
17 do it. I think their concern is if there were an  
18 objection, then counsel might have to lay a foundation  
19 and have a witness that can lay that foundation.

20                 So I understand what you're proposing,  
21 and that is a more efficient way to go, but if there's  
22 an objection, then counsel is sort of stuck if you  
23 can't lay the foundation.

24          MR. ROBB: And I don't believe these are  
25 exhibits that have been objected to.

1 THE COURT: Are these 904's or are they --

2 MR. ROBB: They are, Your Honor.

3 THE COURT: All right.

4 MR. CLARK: 689 was objected to, Your Honor.

5 I'm sorry, 685 was objected to. I was looking -- I was

6 -- I got my numbers crossed and was looking at the

7 different number when I said no objection.

8 But, I do think that, for our part, if

9 we're going to offer -- if there's an objection to an

10 exhibit, there should be a sponsoring witness that

11 helps counsel get around the objection.

12 THE COURT: Right.

13 MR. CLARK: If there are no objections,

14 then -- again, if these are being offered, if we could

15 get some notice of it rather than just tossing out

16 numbers while a witness is on the stand, I think that

17 would be a better way to approach it.

18 THE COURT: All right. So maybe we could

19 proceed in that fashion. If there are no objections,

20 Mr. Robb, then you could simply offer them. But,

21 again, I think -- well, I don't know if there's no

22 objections in the joint statement or no objections as

23 to 904. Because, even under 904, you always reserve

24 your objections as to relevance.

25 MR. CLARK: That's correct.

1 MR. ROBB: Yes.

2 THE COURT: So --

3 MR. ROBB: I don't believe there was an  
4 objection lodged in either document.

5 THE COURT: All right. Okay. So do you have  
6 a number of other --

7 MR. ROBB: I do have a number of others.

8 THE COURT: Okay. And do we need this  
9 witness to testify --

10 MR. ROBB: I think we can reserve this.

11 THE COURT: Okay. Very good.

12 MR. ROBB: I have nothing further.

13 THE COURT: Thank you, Mr. Robb.

14 And, Mr. Clark, if you'd like to proceed  
15 with cross-examination.

16 MR. CLARK: Yes, Your Honor.

17 CROSS-EXAMINATION

18 BY MR. CLARK:

19 Q. Good morning, Dr. Billings.

20 A. Good morning.

21 Q. Nice to see you again. On Thursday you  
22 reviewed four documents that contained excerpts from  
23 speeches by past governors, correct?

24 A. Yes.

25 Q. And I believe one of them related to

1 governor -- former Governor Evans?

2 A. Yes.

3 Q. One related to former Governor Ray, and  
4 another was former Governor Spellman?

5 A. Yes.

6 Q. The fourth was by Governor Locke.

7 A. Yes.

8 Q. As to the speeches that were given by  
9 governors -- former Governors Evans, Ray, and Spellman,  
10 those speeches all predated the enactment of House Bill  
11 1209 in 1993, correct?

12 A. I'm sorry. Please say that again. I lost  
13 the last of it.

14 Q. Yes. As to the speeches delivered by former  
15 Governors Evans, Ray, and Spellman, those three  
16 governors all served their terms prior to the enactment  
17 of HB 1209 in 1993, correct?

18 A. Yes.

19 Q. So those three governors were speaking of our  
20 seat-based system, not the reform -- not the  
21 performance-based system, correct?

22 A. That's correct.

23 Q. Okay. As to Governor Locke, I believe his  
24 speech was taken out of the Senate Journal for  
25 proceedings that occurred in 1998?

1       A.     Yes.

2       Q.     Do you have Exhibit 580 available to you?

3       A.     It doesn't look like I have it here.

4       Q.     All right.

5             MR. CLARK: May I approach the witness, Your  
6 Honor?

7             THE COURT: You may, counsel. Thank you.

8 BY MR. CLARK:

9       Q.     You've been handed what was discussed on  
10 Thursday, Exhibit 580, and I would like you to turn to  
11 page 50, which is, I believe, the page that contains  
12 the excerpt that you read on Thursday. Correct?

13      A.     Yes.

14      Q.     And I believe that paragraph you read refers  
15 to Governor Locke indicating that less than half our  
16 4th graders met our standard in reading as to the first  
17 results that were given --

18      A.     Yes.

19      Q.     -- in that subject, correct?

20      A.     Yes.

21      Q.     Okay. The paragraph below the one you read  
22 begins as follows -- and I don't believe you did read  
23 this one. But the sentence "That's why I'm proposing  
24 that we create the Washington Reading Corp," do you see  
25 that?

1       A.     I do.

2       Q.     And Governor Locke goes on to say, does he  
3 not, "Instead of just giving the schools more money and  
4 telling them to fix the problems, this investment is  
5 designed to give teachers and principals the resources  
6 they need to mobilize their communities."

7                     And he's referring to the Washington  
8 Reading Corp, is he not?

9       A.     Yes, he is.

10      Q.     And do I take it then, from this excerpt from  
11 the Journal of the Senate, that while Governor Locke  
12 was citing the performance of 4th graders on the  
13 reading WASL that was given prior to 1998, his proposal  
14 on how to remedy that situation was the creation of a  
15 specific program called the Washington Reading Corp?

16      A.     Yes.

17      Q.     In other words, Governor Locke recognized the  
18 situation with regard to 4th grade reading WASL results  
19 and his proposed remedy was a targeted investment in a  
20 program called Washington Reading Corp, correct?

21      A.     Yes, that was certainly a part of his  
22 recommendation.

23      Q.     And he goes on to state in the paragraph that  
24 I quoted to you about the Washington Reading Corp that  
25 "The goal of this program is to recruit 25,000

1 volunteer tutors across the state and to have teachers  
2 train them to tutor 82,000 2nd through 5th graders in  
3 reading." He says, "We know that tutoring works and  
4 the children need individualized attention, and we know  
5 that if children fail at reading in the early grades,  
6 it's unlikely they will ever catch up."

7 Did I read that paragraph correctly,  
8 ma'am?

9 A. You did.

10 Q. Now, I believe you testified this morning  
11 that you were a member of the GCERF Commission?

12 A. I was.

13 Q. And GCERF, again, stood for what?

14 A. The Governor's Council on Education Reform  
15 and Funding.

16 Q. In essence, the Commission on Student  
17 Learning took over the charge of the GCERF body, did it  
18 not?

19 A. Yes, for the most part that is true.

20 Q. Okay. And isn't it true that the reason that  
21 GCERF never got around to the funding part of its  
22 mission is because it simply ran out of time?

23 A. I think that you can say that. What would  
24 happen that, once the reform legislation was put in  
25 place, then from there on, since we had in statute the

1 recommendations, there really was no reason to  
2 continue --

3 Q. I'm sorry. Your voice trailed off and I  
4 didn't hear.

5 A. I'm sorry. That since those recommendations  
6 from the Governor's Council had been put into statute,  
7 there was no reason for that council to continue at  
8 that point.

9 Q. Okay. And it never got around to funding  
10 that part of its mission because it ran out of time,  
11 correct?

12 A. I would not say it ran out of time. I would  
13 say that it was that another body took over, if you  
14 will.

15 Q. Oh. I believe you testified on Thursday that  
16 at OSPI you had some involvement with the state's  
17 Learning Assistance Program?

18 A. Yes, I did.

19 Q. Okay. The state's Learning Assistance  
20 Program is a corollary to the federal Title One  
21 Program, is it not?

22 A. It is.

23 Q. And the purpose of it is to address the needs  
24 of students who are struggling with academic  
25 performance, correct?



1       A.     Yes.

2       Q.     The state has had Learning Assistance Program  
3 funding since 1980 or 1982, has it not?

4       A.     Yes. The program had a different name at  
5 that time, but it has had some resources into that sort  
6 of a program, yes.

7       Q.     Okay. Now, I believe you testified this  
8 morning that the Office of the Superintendent of Public  
9 Instruction proposes or recommends funding levels, but  
10 it is up to the legislature to enact the funding for  
11 basic education in Washington; is that correct?

12      A.     Yes.

13      Q.     The legislature determines LAP funding via a  
14 formula; is that correct?

15      A.     Yes.

16      Q.     And basically the purpose of that formula is  
17 to augment or supplement the general allocation or  
18 basic education funding which is provided by the state  
19 for all Washington students, correct?

20      A.     Yes.

21      Q.     Now, during your entire tenure at OSPI, as  
22 one of the staff there and then later as the  
23 superintendent yourself, it was always the case that  
24 OSPI proposed levels of funding for education but the  
25 legislature had the final word on the appropriations

1 for education, correct?

2 A. Yes. The only caveat I would make to that is  
3 the governor has line item veto on that.

4 Q. Correct. And, in turn, the legislature would  
5 have the ability, if it had the votes, to override that  
6 veto.

7 A. That's correct.

8 Q. So between the governor and the legislature,  
9 that's how appropriations for education in Washington  
10 take place.

11 A. Yes, it is.

12 Q. And that remained the case after you left  
13 your position as superintendent of public instruction.

14 A. Yes.

15 Q. Okay. Now, you believe that the purpose of  
16 the reform of basic education during the 1990's was to  
17 guarantee that all Washington students would master HB  
18 1209' four goals, correct?

19 A. Was to make certain that there was necessary  
20 funding and programs and so forth in place that the  
21 system made it possible for every student to achieve at  
22 the highest level as possible.

23 Q. Made it possible for them to achieve at the  
24 highest level possible. That was the purpose of the  
25 reform?

1       A.     Would you ask the question again, please?

2       Q.     Yes. I asked you if the purpose of the  
3 reform in the 1990's was to guarantee that all  
4 Washington students would master HB 1294 score goals,  
5 and I believe your answer indicated that it was to  
6 provide them the opportunity to achieve as high as  
7 possible on those four goals.

8               I'm trying to understand your answer to  
9 my question.

10      A.     Okay. What we proposed in education reform  
11 was a set of high standards that we expected every  
12 child in the state to meet, what they should know and  
13 be able to do by the time they exited the K-12 system.

14      Q.     Okay. But it was not to provide a guarantee  
15 that all students would master the standards, correct?

16      A.     I think we're quibbling about the term  
17 guarantee. It was to make certain that the program had  
18 been defined, that the funding was in place to make it  
19 possible for them to do that.

20      Q.     Okay. It's to give them the opportunity to  
21 achieve those standards but not a guarantee that they  
22 will, correct?

23      A.     Again, I think we're quibbling about the term  
24 guarantee and opportunity. But the expectation,  
25 clearly, was that every student could achieve those

1 high standards if we provided them with the guidance  
2 for what was expected and the funding to make certain  
3 that that could happen.

4 Q. You would agree, would you not, that it's not  
5 possible for the state to guarantee that all Washington  
6 students meet state standards?

7 A. When you say the state, what are you  
8 referring to there?

9 Q. The State of Washington, the one that's in  
10 the Constitution that you quoted and talking about  
11 today and on Thursday.

12 A. And --

13 Q. I'm sorry. I don't understand your  
14 confusion.

15 A. Well, I'm thinking that we're talking about  
16 having to find an education system that certainly we  
17 expected would be able to, to the fullest extent  
18 possible, guarantee that all students would achieve  
19 those high standards.

20 Q. Wouldn't you agree that whether or not a  
21 student succeeds depends, to a very large extent, on  
22 the individual student, him or herself?

23 A. That certainly is an important part of  
24 whether or not a student is successful, but a student's  
25 success in the system is highly dependent also on the

1 kind of teaching that occurs, the kind of materials  
2 that are available, kinds of assistance they've  
3 received and so forth. So just to lay it all back on a  
4 student and say, you know, it's up to you, sorry, is  
5 not realistic.

6 Q. Okay. I understand that. But wouldn't you  
7 also agree that a significant part of a student's  
8 academic success will depend upon the support, if any,  
9 that student receives from his or her family?

10 A. Certainly family support is important in  
11 student success.

12 Q. Okay. And wouldn't you agree that the single  
13 most important aspect in determining whether or not a  
14 student does succeed is the effectiveness of the  
15 teachers in the classroom?

16 A. Would you please say that again?

17 Q. Wouldn't you agree that the most important  
18 contributor to a student's academic success is the  
19 effectiveness of the teacher in the classroom?

20 A. That certainly has a huge part in whether or  
21 not students succeed.

22 Q. Now, throughout your tenure in Washington  
23 public schools as a teacher, OSPI, and as  
24 superintendent, the State of Washington has never had  
25 every student achieve academic success; is that

1 correct?

2 A. I think that's fair to say.

3 Q. And you know of no education system in the  
4 United States where every student has achieved academic  
5 success.

6 A. I don't know about every state in the United  
7 States.

8 Q. Okay. You know of no education system in any  
9 country in the world where every student has achieved  
10 academic success, do you?

11 A. Again, I don't know about the education in  
12 every country in the world.

13 Q. You think it's unlikely, do you not, that  
14 Washington -- all Washington students will ever attain  
15 100 percent successful educational outcomes?

16 A. Would you rephrase the first part of your  
17 question or restate the first part?

18 Q. Sure. You think it's unlikely, do you not,  
19 that all Washington students will ever attain 100  
20 percent successful educational outcomes?

21 A. I would say this, that without the resources  
22 to help them do that, it's unlikely. With the proper  
23 resources, I think it's possible.

24 Q. Do you recall having your deposition taken in  
25 this case?

1           A.       I do.

2                   MR. CLARK:  Your Honor, I would request  
3 permission to open and publish the deposition.

4                   THE COURT:  If you'd give that to the clerk,  
5 please, for publication.

6                   The deposition of Judith Billings will  
7 be published at this time.

8                   MR. CLARK:  May I approach the witness, Your  
9 Honor?

10 BY MR. CLARK:

11           Q.       Dr. Billings, I want to hand you a transcript  
12 of your deposition.

13                   Do you recall that I took your  
14 deposition on or about July 30th of this year?

15           A.       I do.

16           Q.       And do you recall that Mr. Ahearne was  
17 present and defended the deposition?

18           A.       I do.

19           Q.       Would you please turn to page 38 of your  
20 deposition.  On line seven -- and I will read it to you  
21 at this point.  Line seven:  "Question:  Okay.  I  
22 understand what you're saying, but do you think it's  
23 possible for the State of Washington to ever attain 100  
24 percent successful outcomes for all Washington  
25 students?  Answer:  It's probably unlikely."

1                   Do you recall that I asked that question  
2 and that you gave that answer?

3       A.     I do recall.

4       Q.     Okay. Now, HB 1209, the legislation with the  
5 four learning goals contained in it, was passed in  
6 1993, correct?

7       A.     It was.

8       Q.     Now, that law, HB 1209, contemplated that it  
9 would not be fully implemented until at least the  
10 2000-2001 school year, correct?

11      A.     Yes, if -- do I understand that you're asking  
12 about the assessment of the system?

13      Q.     No. No. I'm asking about HB 1209. By it's  
14 terms, HB 1209 contemplated that it would not be fully  
15 implemented until at least the 2000-2001 school year.

16      A.     Would you clarify for me what you mean by  
17 fully implemented?

18      Q.     HB 1209 was about the transition from seat-  
19 based to performance-based system, correct?

20      A.     Yes.

21      Q.     And in order to do that, we had to develop  
22 standards, correct?

23      A.     Yes.

24      Q.     And those standards became the EALR's,  
25 correct?



1       A.     Yes.

2       Q.     And those EALR's weren't developed until  
3     sometime in the mid-1990's, correct?

4       A.     That's correct, not all of them.

5       Q.     And in addition to the standards, the EALR's,  
6     we had to develop the measures by which the performance  
7     of those standards was determined, correct?

8       A.     Yes.

9       Q.     And that was the development of the WASL,  
10    correct?

11      A.     It was.

12      Q.     And the first WASL tests that were  
13    administered were the ones that Governor Locke was  
14    talking about in his 1998 speech, the reading exam for  
15    the 4th graders, correct?

16      A.     That was the first, if you will, test that  
17    counted. Tests were piloted before then to make  
18    certain that we were asking the right questions, that  
19    they were biased free and so forth.

20      Q.     Okay. And the first test that counted, as  
21    you first referred to it, happened sometime before  
22    Governor Locke's speech in 1998, correct?

23      A.     Yes.

24      Q.     And would it be correct in assuming that that  
25    exam, that first one that counted, was administered in

1 1997?

2 A. Yes, it was.

3 Q. Now, going back to my original question. HB  
4 1209 contemplated the development of standards,  
5 correct?

6 A. It did.

7 Q. And it also contemplated the development of  
8 the assessments by which we would test the student's  
9 performance as to those standards, correct?

10 A. Yes.

11 Q. HB 1209, by its own terms, HB 1209 would not  
12 be fully implemented until at least the 2000-2001  
13 school year, correct?

14 A. If I understand you correctly, in the litany  
15 you have gone through I think that's fair to say.

16 Q. Okay. Thank you. In fact, the 2000-2001  
17 school year was the first time that all school  
18 districts were expected to have implemented the reforms  
19 initiated by House Bill 1209, correct?

20 A. Yes. Again, if you mean by that they were  
21 expected to have implemented them and had taken  
22 assessments to do the check on whether or not they were  
23 accomplishing what we had set out to do.

24 Q. Okay. Thank you. One of the reasons why  
25 1209 was not expected to be fully implemented before

1 the 2000-2001 school year was because it was  
2 anticipated that it would take at least that long to  
3 develop the EALR's, to develop the assessments, and to  
4 administer the assessments to see how students were  
5 doing, correct?

6 A. Yes.

7 Q. In fact, the transition from a seat-based  
8 system to a performance-based system took a number of  
9 years after 1993 to accomplish, didn't it?

10 A. Do I understand you to say to have all of the  
11 assessments in place for every grade level and for the  
12 first two learning goal standards?

13 Q. Yes.

14 A. Yes.

15 Q. Now, in fact, of the four assessments, we  
16 have one for reading, correct?

17 A. We do.

18 Q. We have one for writing or communication.

19 A. Yes.

20 Q. We have one for mathematics.

21 A. We do.

22 Q. And we have one for science, correct?

23 A. Yes.

24 Q. Okay. And only three of those four  
25 assessments were in place by the 2000-2001 school year,

1 correct?

2 A. Yes.

3 Q. Okay. The science WASL assessment, in fact,  
4 took much longer than the 2000 to 2001 school year to  
5 be developed and administered.

6 A. Yes.

7 Q. In fact, the science WASL was not implemented  
8 until the 2004 or 2005 school year, correct?

9 A. I believe that is correct.

10 Q. So the full battery of WASL assessments,  
11 again, that were contemplated, in part, by House Bill  
12 1209 were not in place until 2005, correct?

13 A. I think that is correct.

14 Q. The first time that WASL counted as a  
15 graduation requirement was in the year 2008, correct?

16 A. It was.

17 Q. And that was only as to the reading and  
18 writing/communication WASL's, correct?

19 A. Yes.

20 Q. Now, originally there were eight EALR's  
21 developed, correct?

22 A. Yes, there were eight content areas  
23 identified.

24 Q. And eventually a ninth Essential Academic  
25 Learning Requirement was implemented, correct?

1 A. Yes, educational technology was added.

2 Q. And the educational technology EALR the,  
3 ninth one, was only added as of a couple three years  
4 ago.

5 A. Yes.

6 Q. Now, House Bill 1209 also contemplated that  
7 the state would conduct a study of the sufficiency of  
8 funding for basic education in Washington, correct?

9 A. Yes.

10 Q. And that study, in fact, was conducted in  
11 1994-1995?

12 A. It was.

13 Q. Okay. And you weren't part of that study,  
14 were you?

15 A. No, I think our fiscal department provided  
16 some information, but I personally was not a part of  
17 the study committee.

18 Q. Okay. You weren't involved in any of the  
19 analysis that was done as part of that study that came  
20 out in 1995.

21 A. No.

22 Q. Okay. But OSPI may have provided some staff  
23 support, information on request from those who  
24 conducted the study?

25 A. Yes.

1 Q. Okay. Now, that study concluded, did it not,  
2 that Washington's funding system compared favorably to  
3 aspects of other funding systems then prevalent in the  
4 United States, didn't it?

5 A. That was one of its conclusions.

6 Q. And it also concluded that the level of  
7 funding being provided as of the time of the study was  
8 sufficient.

9 A. I do not believe that that was the term that  
10 was used, that it was sufficient.

11 Q. What do you believe was the term that was  
12 used?

13 A. I believe they simply said that it compared  
14 favorably to other systems.

15 Q. Okay. And it evaluated the other systems and  
16 Washington's under seven concepts, correct?

17 A. It did.

18 Q. Now, you disagreed with that conclusion, did  
19 you not?

20 A. Yes, I did disagree with that conclusion. I  
21 I don't believe that, regardless of what system you  
22 compared it to, that -- that we met the constitutional  
23 requirement of ample provision for the education of all  
24 students.

25 It's one thing to say that it compares

1 favorably to other systems, but other systems don't  
2 have our constitutional mandate of ample funding for  
3 all students.

4 Q. That may be. You were not part of the  
5 deliberations of the committee that was involved in  
6 commissioning and receiving the study, correct?

7 A. Was not a part of the --

8 Q. The --

9 A. -- committee that did the study?

10 Q. Yes.

11 A. No. No.

12 THE COURT: Which exhibit, counsel?

13 MR. CLARK: Exhibit 1376, Your Honor. I was  
14 going to say may I approach the witness?

15 THE COURT: You may, counsel.

16 BY MR. CLARK:

17 Q. Could you identify Exhibit 1376,  
18 Dr. Billings?

19 A. This is entitled Joint Legislative Fiscal  
20 Study Committee on K-12 Finance Final Report to the  
21 Washington State Legislature dated December 1995.

22 Q. And Exhibit 1376 is the study that we've just  
23 been talking about of Washington's education finance  
24 system?

25 A. Yes.

1 MR. CLARK: We would offer 1376, Your Honor.

2 THE COURT: Any objection to 1376?

3 MR. EMCH: No objection to 1376, Your Honor.

4 THE COURT: 1376 is admitted.

5 EXHIBIT ADMITTED

6 BY MR. CLARK:

7 Q. Could you turn to page 20 of 1376,

8 Dr. Billings, and that will be --

9 A. Page 20?

10 Q. At the bottom, yeah. At the bottom it  
11 indicates page numbers and the document page I'm  
12 looking for is page 20.

13 A. Yes, I have it.

14 Q. This is a chart on page 20 that talks about  
15 six programs that are considered to be part of basic  
16 education as currently defined by the legislature,  
17 correct?

18 A. Yes.

19 Q. It's interesting. It says "Together these  
20 five programs account for over 95 percent of the  
21 state's K-12 general fund state budget."

22 As you look at this chart, do we have  
23 five or do have six programs that comprise the state's  
24 definition of basic education?

25 A. Are we looking at the bulleted points?



1 Q. Yes, I believe so.

2 A. Yes.

3 Q. For example, general apportionment. That's  
4 the basic education allocation, correct?

5 A. Yes, it is.

6 Q. And as of the time of this report, when you  
7 were superintendent of public instruction, that was one  
8 of the programs in the state's definition of basic  
9 education, correct?

10 A. Yes.

11 Q. Underneath general apportionment is  
12 transportation. And to/from pupil transportation as of  
13 the time of this document was also considered to be  
14 part of the state's definition of basic education.

15 A. Yes.

16 Q. And I noticed next to each of the bulleted  
17 items, including general apportionment in  
18 transportation, there are statutory references.

19 Do you see those?

20 A. Yes.

21 Q. They are a little hard to read.

22 A. I was going to say I can't read them, but,  
23 yes, I see them.

24 Q. And those statutory references are, in fact,  
25 references to the statutes that contain that part of

1 the definition -- the state's definition of basic

2 education, correct?

3 A. Yes, that's correct.

4 Q. Okay. Special education was also part of the

5 state's definition of basic education in 1995, correct?

6 A. Yes.

7 Q. The institutions were also deemed part of the

8 state's definition of basic education, correct?

9 A. Yes.

10 Q. What are institutions as far as you recall?

11 A. Institutions, as I recall, we had a school  
12 for the deaf, a school for the blind, and we had also  
13 institutions where children were incarcerated where we  
14 were responsible for the education program.

15 Q. All right. The last two items that have  
16 marks next to the asterisks, stars, whatever they may  
17 be, are Bilingual and Learning Assistance Program and  
18 both those features were aspects of the state's  
19 definition of basic education, correct?

20 A. Yes, they were.

21 Q. As far as you know, today, do those six  
22 aspects of the state's definition of basic education  
23 hold true today?

24 A. As far as I know, yes.

25 THE COURT: Mr. Clark, could I just get some

1 clarification to make sure I understand them?

2 MR. CLARK: Yes.

3 THE COURT: The total 8.3 billion; is that  
4 correct?

5 MR. CLARK: That's what the chart indicates,  
6 Your Honor. And if you would like the witness to  
7 confirm that, I can ask a question.

8 THE COURT: If you would, please, just so I'm  
9 clear on these numbers.

10 MR. CLARK: Okay.

11 THE COURT: It says to read them in  
12 thousands, so I'm assuming that the total amount is 8.3  
13 billion.

14 BY MR. CLARK:

15 Q. Why don't I go ahead and ask the question,  
16 doctor, so we have a question and answer.

17 The general fund state dollars in thousands,  
18 the chart that's rendered here, does, in fact, render a  
19 total in the billions of dollars, does it not?

20 A. It does. And this is for biennium, not for  
21 one year.

22 Q. Correct.

23 THE COURT: Okay.

24 BY MR. CLARK:

25 Q. Correct. so it would be roughly four billion

1 or so a year based upon this chart in Exhibit 376.

2 A. That's correct.

3 Q. Okay. And this chart renders what the 1995,  
4 '97 budget for K-12 education included according to the  
5 program.

6 A. Yes, divided by program.

7 Q. Okay. And some of these programs, the six we  
8 just talked about, are within the state's definition of  
9 basic education, correct?

10 A. Yes, they are.

11 Q. The other programs that are here, such as  
12 food services, levy equalization, highly capable  
13 education reform, and block grants were not considered  
14 part of the state's definition of basic education,  
15 correct?

16 A. No. These are -- these are kinds of programs  
17 where the legislature would always include that phrase  
18 as funds become available.

19 Q. As funds become available? And, as you  
20 understood it, they did that because the legislature  
21 did not consider these programs to be part of the  
22 definition of basic education.

23 A. They did not want to be held to funding them  
24 every year.

25 Q. And, therefore, they did not consider them

1 part of the definition of basic education.

2 A. Yes, I think that's true.

3 Q. Now, this chart on page 20 also indicates  
4 that of the funding that's being provided for the '95,  
5 '97 -- or excuse me, that's being budgeted for the '95,  
6 '97 biennium, 95.6 percent of that funding relates to  
7 programs within the definition of basic education.

8 A. Yes, that's what this chart shows.

9 Q. And the balance of the programs would account  
10 for the 4.4 percent balance of the budgeted amount.

11 A. Correct.

12 Q. Just for the record, I would note to  
13 Dr. Billings that the bottom right-hand corner page 20  
14 there's a date of January 15th, 1996?

15 A. Yes.

16 Q. Do you understand that to be the date when  
17 this report was provided to the legislature?

18 A. I believe so. It would have been the point  
19 they recognized it. Actually the date on the front of  
20 the report is December 1995, so that was when it was  
21 completed then.

22 Q. Okay. Okay. Could you turn to page 40 of  
23 1376, please. It says part Roman numeral II.

24 A. I'm sorry. I'm on the wrong page.

25 Q. Page 40.

1       A.     Yes.

2       Q.     Okay.  It states, "Part II is an evaluation  
3 of how Washington's finance system relates to the  
4 principles of the model system and an assessment of how  
5 Washington compares with national trends on changes in  
6 school finance systems."

7                     Did you understand that to be the  
8 purpose of this particular study?

9       A.     To evaluate the finance system in comparison  
10 with other finance systems, is that what you're  
11 asking?

12       Q.     As well as to see how Washington system  
13 relates to the principles of a model system.

14                     Did you understand that it had the two  
15 parts that are referenced in part --

16       A.     Yes.

17       Q.     -- two here?

18       A.     Uh-huh.

19       Q.     You did.  Okay.  If you would turn to page  
20 44, please.

21                     At the top of page 44, the first full  
22 sentence states, "When compared to the seven concepts  
23 of an optimal school finance system, the Washington  
24 school finance system does very well.  In fact, it  
25 meets or exceeds the expectations set out by nearly all

1 of the concepts following a review of each concept."

2                   Is the sentence -- the first full  
3 sentence I read to you, the conclusion of the report  
4 that you disagreed with?

5       A.     Yes, in the sense that it goes on to talk  
6 about it, it talks about this as being full funding and  
7 it was not.

8       Q.     I'm sorry. It talks about something being  
9 full funding?

10      A.     Yes. It talks about -- if you look at the  
11 first item there where it says district -- well, then  
12 it says, "The program is fully funded by the state." I  
13 disagreed with that. It is not fully funded meeting  
14 the constitutional mandate of ample provision for the  
15 educational of all students.

16      Q.     So you disagreed with that conclusion.

17      A.     Yes, I did.

18      Q.     Okay. And on page 44 it lists seven concepts  
19 or principles for an optimal school finance system.

20                   Did you disagree with those -- any of  
21 those points as being features of an optimal system?

22      A.     No, I think these are things that it's  
23 reasonable to look at as to whether or not a system is  
24 fully funded.

25      Q.     Okay. And as to each of those items, the

1 study concluded that the Washington system did  
2 incorporate each of those seven concepts, correct?

3 A. To some degree, yes.

4 Q. On page 45 in the second full paragraph, it  
5 states in conclusion, "The State of Washington has a  
6 system of school funding that compares favorably to an  
7 optimal system."

8 Did you also disagree with that  
9 conclusion?

10 A. What I disagree with in this report is that  
11 it doesn't matter really if it compares favorably to an  
12 optimal system. What matters is if the legislature has  
13 met the constitutional requirement that there be ample  
14 provision for the education of all children in the  
15 state, and it does not do that.

16 Q. Would you turn to page 47, please. If you  
17 would go to the heading How Washington Compares to  
18 National Trends.

19 Are you with me?

20 A. Yes, I am with you.

21 Q. Okay. The first sentence under that heading  
22 states, "The Washington school finance system not only  
23 compares very well with concepts used to define an  
24 optimal system, it also compares well against the  
25 common trends."



1                   Did you agree or disagree with that  
2 conclusion?

3       A.     Again, whether or not it compares favorable  
4 to what someone says is an optimal system was not, in  
5 my mind, the point. The point is, is the Washington  
6 funding system one that fully funds education, makes  
7 ample provision for the education of all children in  
8 the state, and, in my estimation, it does not.

9       Q.     You didn't believe --

10      A.     It did not.

11      Q.     I'm sorry. Excuse me.

12      A.     I'm sorry.

13      Q.     You don't believe that the conclusion that  
14 the Washington system compares well to other systems  
15 nationally, and a conclusion that incorporates seven  
16 concepts of an optimal system, and concludes that  
17 Washington's system does that, you don't believe that  
18 that is the same as concluding that Washington fully  
19 funds public K-12 education for Washington schools.

20      A.     No, I don't.

21      Q.     Okay. In Exhibit 1376 -- and I'm through  
22 with it now, if you'd like me to take the volume away.

23      A.     I'll just set it here.

24      Q.     You confirmed for us that in 1376, that chart  
25 of programs, listed the statutory -- statutorily-

1 provided programs that are part of the state's  
2 statutory definition of basic education, correct?

3 A. That was the statutory basis at that time  
4 without taking into account the changes that came later  
5 with House Bill 1209 and the substantive content that  
6 was defined there.

7 Q. But, in fact, the program -- the six programs  
8 we discussed in Exhibit 1376 were all programs that  
9 comprised the state's statutory definition of basic  
10 education back in 1995 --

11 A. Yes.

12 Q. -- correct? And that was two years after the  
13 passage of House Bill 1209.

14 A. Yes.

15 Q. Just as the state's definition of basic  
16 education was contained in those statutes, the four  
17 learning goals themselves were contained in state  
18 statutes, were they not?

19 A. Yes.

20 Q. So the four learning goals, the EALR's, which  
21 were based upon the four learning goals, and the  
22 state's definition of basic education are all a product  
23 of state statute, correct?

24 A. Yes, if I'm understanding your question.

25 Q. Okay. Statutes address student-to-staff

1 ratios that are then funded by the state, correct?

2 A. Would you please repeat the first part of  
3 your question?

4 Q. All right. Statutes address student-to-staff  
5 ratios that are then funded by the state, correct?

6 A. Yes.

7 Q. And that's part of the basic allocation.

8 A. Yes, that's what was happening at that time  
9 and still is.

10 Q. And still is, correct?

11 A. Yes.

12 Q. The state's funding for basic education is  
13 incorporated into state statute, too, is it not?

14 A. Would you repeat the question?

15 Q. Yes. Just as the definition and the goals  
16 and the EALR's were products of state statute, every  
17 year the state provides money for K-12 education in  
18 statutes, does it not?

19 A. Yes, it does.

20 Q. Okay. In fact, we have annual appropriation  
21 acts that provide the amounts of funding for the basic  
22 ed allocation and the categorical programs like special  
23 education, learning assistance, transitional bilingual,  
24 correct?

25 A. Yes. The basic -- the amount is established

1 for a biennium and then if there is some need for  
2 supplement funding or in some cases if there is a need  
3 to cut funding based on revenue, that happens a second  
4 year.

5 Q. So we have biannual funding statutes through  
6 appropriation acts, correct?

7 A. Yes.

8 Q. And the extent that funding supplemental to  
9 what is appropriated in the biannual acts as necessary,  
10 that is also provided pursuant to state statute,  
11 correct?

12 A. Yes, it is.

13 Q. Dr. Billings, do you believe that the State  
14 of Washington is obligated to reform K-12 education  
15 when and as needed?

16 A. Yes. In fact, those were the recommendations  
17 from the Governor's Council on Education Reform and  
18 Funding that this -- that our society changes, our  
19 needs change and that there should be a constant review  
20 and look at what was necessary to meet the  
21 requirements.

22 Q. All right. And when Washington does reform  
23 K-12 public education, it does so through state  
24 statutes, correct?

25 A. If you're talking about the system as a

1 whole, yes, that what I think a caveat here is is that  
2 there is a good deal of flexibility for local districts  
3 to do some things that are not necessarily a part of  
4 state statute.

5 MR. CLARK: I'm going to go to Exhibit 1370.

6 BY MR. CLARK:

7 Q. Could you identify Exhibit 1370, please,  
8 Dr. Billings?

9 A. This is entitled A History of Education  
10 Reform in Washington State, the Transition to a  
11 Performance-Based Student Learning Education System  
12 issued by the Office of the Superintendent of Public  
13 Instruction in February 1995 and authored by Kathleen  
14 Plato, who was at that time, I believe, my assistant  
15 superintendent in charge of school reform.

16 MR. CLARK: We would offer 1370, Your Honor.

17 THE COURT: Any objection to 1370?

18 MR. EMCH: Your Honor, I don't believe we  
19 have an objection per se. I'd ask counsel to tell me  
20 if that is a multi-page document or one-page only. I  
21 just want to double check on that.

22 MR. CLARK: No, it's a multiple-page  
23 document. There's a cover page and there's the study  
24 itself that follows it.

25 MR. EMCH: No objection, Your Honor.

1 THE COURT: 1370 is admitted.

2 EXHIBIT ADMITTED

3 BY MR. CLARK:

4 Q. On the page marked two, which is actually the  
5 first page of the study itself, it indicates that you  
6 were the superintendent of public instruction as of the  
7 date of this document.

8 A. I was.

9 Q. Are you familiar with the study that was done  
10 by Kathleen Plato back in February of 1995?

11 A. I'm certain I was much more familiar with it  
12 then than I am now.

13 Q. Okay. And you believed that this was an  
14 appropriate study for OSPI to have conducted back in  
15 the 1990's.

16 A. Yes.

17 Q. And by its title, it does relate to the  
18 history of education reform in Washington State and the  
19 transition to the performance-based system that's been  
20 the subject matter of your testimony today.

21 A. Yes.

22 Q. What was the purpose, if you recall, to  
23 conducting this study?

24 A. I believe it was just to provide a historical  
25 perspective on what we had done up to that point with

1 education reform.

2 Q. Would you turn to page six of Exhibit 1370,  
3 please.

4 A. Yes, I have it.

5 Q. All right. There are a number of programs  
6 indicated on page six and over to page seven, correct?

7 A. Yes.

8 Q. The student learning improvement grants,  
9 which are referenced as a \$39.9 million investment for  
10 additional time and resources for schools, site-based  
11 planning.

12 That was, in fact, a program that the  
13 state provided to districts during your tenure.

14 A. Correct.

15 Q. Okay. The other programs that are referred  
16 to here, the School-to-Work Transition Program, the  
17 Educational Technology Planning and Readiness to Learn  
18 Grants were also provided during your tenure --

19 A. Yes --

20 Q. -- correct?

21 A. -- they were.

22 Q. And they were provided as part of funding  
23 that was provided to help smooth the transition from  
24 the seat-based system to the performance-based system,  
25 correct?

1 A. Yes.

2 Q. Now, on page seven of the report it also  
3 refers to the establishment of the Center for  
4 Improvement of Student Learning at OSPI.

5 Was that, in fact, done?

6 A. Yes.

7 Q. And that was to provide the technical  
8 assistance on best practices related to school matters  
9 as described in this document, correct?

10 A. Yes.

11 Q. And professional development support is also  
12 referred to on page seven, is it not?

13 A. Yes.

14 Q. And that was, in fact, provided by the state  
15 during the 1990's as part of the transition.

16 A. Yes, at that time.

17 MR. CLARK: Okay. Your Honor, I have a  
18 request if we could begin our break a little bit early  
19 today --

20 THE COURT: Sure.

21 MR. CLARK: -- I would appreciate it.

22 THE COURT: All right. Let's take our  
23 morning recess at this time. It will be for 15  
24 minutes. We'll resume at 10:40 this morning.

25 Court will be at recess.



1           (Whereupon a recess was taken and there was a  
2 change in court reporters.)

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## 1 REPORTER'S CERTIFICATE

2

3 STATE OF WASHINGTON)  
4 ) SS:  
5 COUNTY OF KING )

6

7 I, CYNTHIA A. KENNEDY, an official reporter of  
8 the State of Washington, was appointed an official  
9 court reporter in the Superior Court of the State of  
10 Washington, County of King, on April 17, 2006, do  
11 hereby certify that the foregoing proceedings were  
12 reported by me in stenotype at the time and place  
13 herein set forth and were thereafter transcribed by  
14 computer-aided transcription under my supervision and  
15 that the same is a true and correct transcription of my  
16 stenotype notes so taken.

17 I further certify that I am not employed by,  
18 related to, nor of counsel for any of the parties named  
19 herein, nor otherwise interested in the outcome of this  
20 action.

21

22 Dated: \_\_\_\_\_

23

24

25

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